IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 33022 of 2006(F)

PETITIONER:

M/S. HENKEL SPIC (I) LTD., (NOW 'HENKEL INDIA LTD.', BY MERGER), THAIKKATTUKARA, ALUVA, KOCHI, REP. BY K. GOPINATHAN, AUTHORISED SIGNATORY & DEPOT IN CHARGE, PALAKKAD.

BY ADV. SRI.JOSE JOSEPH

RESPONDENTS:

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1. THE ASST. COMMISSIONER (ASSMT) II, COMMERCIAL TAXES, SPECIAL CIRCLE III, ERNAKULAM.

2. THE DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES, ERNAKULAM.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) 33022/2006

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DATED THIS, THE 12TH DAY OF DECEMBER, 2006.

JU D G M E N T

Petitioner impugns an interim order passed by the appellate authority - Ext.P5 produced in the case. He preferred an appeal against the order of assessment. His contention was that he is only a second seller of the goods and as such there is no liability to be assessed. According to him, he is only a licence holder of the trade mark and not an owner, as such. Based on the licence issued to him by the owner, he has sub-licensed the same to the manufacturer who, in turn, manufacturers the goods and sells the same to him besides to other parties. The appellate authority considered the above contention and agreed that petitioner has made out a prima facie case for consideration; however, a final finding could be reached only after perusal of the agreements relied upon by the petitioner. In such circumstances, an interim stay was granted on condition to pay 50% of the disputed tax and to furnish security for the balance amount.

2. Heard the learned Government Pleader. Normally, this Court will

not interfere with the interim orders passed by the appellate authority in exercise of its discretion. However, once a prima facie case is made out , it has then to be considered the balance of convenience. In this regard, the fact remains that the petitioner is a registered dealer and he is also making an average remittance of Rs. 36 lakhs by way of tax as evidenced by Exts.P6 and P7. There is no case that he has not co-operated with the assessment proceedings. Therefore, to insist for payment of 50% of the disputed tax in a mechanical way, in the present case, appears to cause serious hardship to the petitioner. Hence, in the factual situation, the order passed by the appellate authority demands a slight modification and accordingly, ordered as follows:

3. The balance tax, according to the petitioner, comes around Rs. 38 lakhs. Hence there will be a direction that in case petitioner pays an amount of Rs. 15 lakhs on or before 15.1.2007 and executes a simple bond without surety for the balance tax due, there will be an interim stay of realization of the balance amount of tax as per the assessment order impugned in the

appeal. In case of default, the entire amount shall become due forthwith and realizable.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-